



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,934	10/19/2000	Henry Edward Pfeiffer	964-4	5671

27526 7590 07/02/2003

BLACKWELL SANDERS PEPER MARTIN LLP
TWO PERSHING SQUARE
2300 MAIN STREET, SUITE 1000
KANSAS CITY, MO 64108

EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 07/02/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/691,934

Applicant(s)

PFEIFFER, HENRY EDWARD

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-16, 39 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) 43-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-16, 39, 41, and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3673

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 21, 2003 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-16, 39, 41, and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3, it is not clear as to what is being defined by "...having horizontal pairs of opposing longitudinal edges and a vertical pair of longitudinal edges". More specifically, what is being defined by "...having horizontal pairs of opposing longitudinal edges"? Does each panel possess two or more pairs of horizontal edges as well as a pair of vertical edges? Otherwise, what is meant, or what is being defined, by "horizontal pairs of opposing longitudinal edges" and "a vertical pair of longitudinal edges"? Further, what, specifically, is being defined by "so the foam panels can be inverted in a side-to-side fashion or an end-to-end fashion and the engaging means still retaining the longitudinal edges have similar engaging means"? For example, "the engaging

Art Unit: 3673

means still retaining the longitudinal edges” does not appear to have an antecedent within the claim. What, otherwise, is meant, or what is being defined, by “the engaging means still retaining the longitudinal edges having similar engaging means”?

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 3-16 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Cymbala et al. '714. Cymbala et al. '714 shows, Figs. 1-3, pair of opposing foam panels 2 having a plurality of ties 3 extending therebetween with opposing flange members 4 embedded or encapsulated within respective opposing foam panels. A web 5 formed of spaced, parallel bridge members which possess outwardly extending rebar-retaining seats positioned therealong separates the opposing pair of flange members. Engaging means in the form of alternating substantially similar teeth and sockets having substantially equal lateral dimensions is formed

Art Unit: 3673

along the upper and lower edges as at 26, 27 which constitute "engaging means...for removably retaining a longitudinal edge having similar engaging means formed therealong". Second engaging means is formed along the side edges as at 20, 21. The second engaging means including an array of alternating substantially similar teeth and sockets, (or tongues and grooves). Corner block can be seen in Fig. 4. A longitudinal axis of the tie flange members 4 can be seen as substantially equal in length to the transverse axis of the foam panels 2. Pair of parallel bridge members extending transverse to the flange members is as along 5. Rebar retaining seat can be seen formed along the bridge members. Blocks 1, or panels 2, can be connected to a perimeter edge of a substantially similar block or panel along at least one edge, inverted or otherwise.

5. Claims 3-16 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Mensen '459. Mensen '459 shows, Figs. 1, 3, 4, 5, and 7, pair of opposing foam panels 12, 14 having a plurality of ties 42 extending therebetween with opposing flange members 44, 46 embedded or encapsulated within respective opposing foam panels. A web formed of spaced, parallel bridge members 48, 50 which possess outwardly extending rebar-retaining seats 76 positioned therealong separates the opposing pair of flange members. Engaging means in the form of alternating substantially similar teeth and sockets having substantially equal lateral dimensions is formed along the upper and lower edges as described at lines 1-10 in col. 4 which constitute "engaging means...for removably retaining a longitudinal edge having similar engaging means formed therealong". Second engaging means is formed along the side edges as at 38 and can be

Art Unit: 3673

seen in Fig. 1 along the side edges in the form of alternating substantially similar teeth and socket, (or tongue and groove), formations. Corner block can be seen in Fig. 3. A longitudinal axis of the tie flange members 44, 46 can be seen as substantially equal in length to the transverse axis of the foam panels 12, 14. Pair of parallel bridge members extending transverse to the flange members is at 48, 50. Rebar retaining seat can be seen formed along the bridge members as within or between 76. Blocks 10, or panels 12, 14, can be connected to a perimeter edge of a substantially similar block or panel along at least one edge, inverted or otherwise.

6. Claims 3-5, 8-16, 39, 41, and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Beliveau '462. Beliveau '462 shows, Figs. 1 and 3, pair of opposing foam panels 14a, 14b having a plurality of ties 16 extending therebetween with opposing flange members 20a, 20b embedded or encapsulated within respective opposing foam panels. A web 32 formed of spaced, parallel bridge members 44 which possess outwardly extending rebar-retaining seats positioned therealong separates the opposing pair of flange members. Engaging means in the form of alternating and substantially uniform or substantially similar teeth and sockets 18, 19 is formed along the upper and lower edges. Two rows of teeth can be seen with each tooth of a row being spaced apart from adjacent teeth of the same row by a socket with adjacent rows offset from each other by a distance of one side of one tooth. A longitudinal axis of the tie flange members 20a, 20b can be seen as substantially equal in length to the transverse axis of the foam panels 14a, 14b. Pair of parallel bridge members extending transverse to the flange members is as

Art Unit: 3673

along 44. Rebar retaining seat can be seen formed along the bridge members. Blocks 10, or panels 14a, 14b, can be connected to a perimeter edge of a substantially similar block or panel along at least one edge, inverted or otherwise.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-6, 8-16, 39, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beliveau '462 in view of Horobin '382.

Beliveau '462 shows, Figs. 1 and 3, pair of opposing foam panels 14a, 14b having a plurality of ties 16 extending therebetween with opposing flange members 20a, 20b embedded or encapsulated within respective opposing foam panels. A web 32 formed of spaced, parallel bridge members 44 which possess outwardly extending rebar-retaining seats positioned therealong separates the opposing pair of flange members. Engaging means in the form of alternating and substantially uniform or substantially similar teeth and sockets 18, 19 is formed along the upper and lower edges. Two rows of teeth can be seen with each tooth of a row being spaced apart from adjacent teeth of the same row by a socket with adjacent rows offset from each

Art Unit: 3673

other by a distance of one side of one tooth. A longitudinal axis of the tie flange members 20a, 20b can be seen as substantially equal in length to the transverse axis of the foam panels 14a, 14b. Pair of parallel bridge members extending transverse to the flange members is as along 44. Rebar retaining seat can be seen formed along the bridge members. Blocks 10, or panels 14a, 14b, can be connected to a perimeter edge of a substantially similar block or panel along at least one edge, inverted or otherwise.

Horobin '382 teaches formation of engaging means in the form of alternating teeth and sockets, as at 20, 22, formed along the side edges of respective panel members. To have provided the Beliveau panel members with engaging means in the form of alternating teeth and sockets formed along the side edges, thus providing a more secure assembly of panel members in an edge to edge relationship, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by Horobin '382.

8. Claims 3-16, 39, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beliveau '462 in view of Mensen '459.

Beliveau '462 shows, Figs. 1 and 3, pair of opposing foam panels 14a, 14b having a plurality of ties 16 extending therebetween with opposing flange members 20a, 20b embedded or encapsulated within respective opposing foam panels. A web 32 formed of spaced, parallel bridge members 44 which possess outwardly extending rebar-retaining seats positioned therealong separates the opposing pair of flange members. Engaging means in the form of

Art Unit: 3673

alternating and substantially uniform or substantially similar teeth and sockets 18, 19 is formed along the upper and lower edges. Two rows of teeth can be seen with each tooth of a row being spaced apart from adjacent teeth of the same row by a socket with adjacent rows offset from each other by a distance of one side of one tooth. A longitudinal axis of the tie flange members 20a, 20b can be seen as substantially equal in length to the transverse axis of the foam panels 14a, 14b. Pair of parallel bridge members extending transverse to the flange members is as along 44. Rebar retaining seat can be seen formed along the bridge members. Blocks 10, or panels 14a, 14b, can be connected to a perimeter edge of a substantially similar block or panel along at least one edge, inverted or otherwise.

Mensen '459 teaches formation of engaging means in the form of alternating teeth and sockets, as at 38, formed along the side edges of respective panel members. Mensen '459 also teaches formation of a corner block concrete form including opposing foam panels having rectangular segments in angular relation to each other as shown by Fig. 3. To have provided the Beliveau panel members with engaging means in the form of alternating teeth and sockets formed along the side edges, thus providing a more secure assembly of panel members in an edge to edge relationship, as well as provided the Beliveau form assembly with any number of corner block concrete forms, thus allowing easy formation of a corner assembly, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by Mensen '459.

Art Unit: 3673

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beliveau '462 in view of Cymbala et al. '714.

Cymbala '714 teaches formation of a corner block concrete form including opposing foam panels having rectangular segments in angular relation to each other as shown by Fig. 4. To have provided the Beliveau form assembly with any number of corner block concrete forms, thus allowing easy formation of a corner assembly, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by Cymbala et al. '714.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beliveau '462 in view of Horobin '382 as applied to claims 3-6, 8-16, 39, 41, and 42 above, and further in view of Cymbala et al. '714.

Cymbala '714 teaches formation of a corner block concrete form including opposing foam panels having rectangular segments in angular relation to each other as shown by Fig. 4. To have provided the Beliveau form assembly with any number of corner block concrete forms, thus allowing easy formation of a corner assembly, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by Cymbala et al. '714.

Art Unit: 3673

Response to Arguments

11. Applicant's arguments filed March 20, 2003 have been fully considered but they are not persuasive. Each of the applied principal references, alone or as modified, can be "stacked in a staggered pattern regardless of orientation". Though, the language of the rejected claims does not appear to clearly set forth such an arrangement and in fact is directed to a block per se. Rejections involving Beliveau '462 are being presented under 35 U.S.C. 102 as well as under 35 U.S.C. 102 with the particular metes and bounds of the claim language not being clearly ascertained.

Otherwise, the language of the instantly rejected claims fails to present features differing from those of the principally applied prior art, alone or as modified.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 3673

M. Safavi
June 26, 2003